

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

★ FEB 01 2018 ★

----- X
TRUSTEES OF THE BUILDING TRADES :
EDUCATIONAL BENEFIT FUND, et al., :
: Plaintiffs, : ORDER
-against- : 16-CV-3294 (JFB) (AYS)
: :
PREFERRED ELECTRIC II, INC., et al., :
: Defendants. :
----- X
JOSEPH F. BIANCO, District Judge:

On October 2, 2017, this Court entered default judgment against defendants and referred the matter to Magistrate Judge Anne Y. Shields for a Report and Recommendation to address the issue of damages and other relief sought by plaintiff. (ECF No. 20.) On January 3, 2018, Judge Shields issued a Report and Recommendation (the "R&R"), recommending that plaintiffs be awarded \$25,364.78, representing \$16,344.45 in unpaid contributions, \$960.33 for interest on the unpaid contributions, \$243 in audit interest, \$3,073.00 in liquidated damages, \$2,600.00 for attorney's fees, and \$2,144.00 for other costs. (ECF No. 21.) A copy of the R&R was served on defendants on January 3, 2018. (ECF No. 22.) Judge Shields directed that any objections to the R&R be filed within fourteen (14) days of service of the R&R. (ECF No. 21 at 6.) The deadline has since passed, and no party has filed an objection.

Where there are no objections, the Court may adopt a report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("It does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial

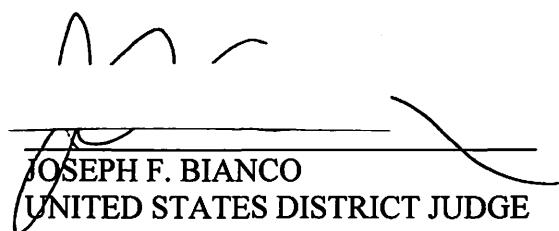
review of the magistrate's decision."); *cf.* 28 U.S.C. § 636(b)(1)(c) *and* Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) ("[B]ecause the waiver rule is non jurisdictional, we 'may excuse the default in the interests of justice.'") (quoting *Thomas*, 474 U.S. at 155)).

Having conducted a review of the full record and the applicable law, and having reviewed the R&R for clear error, the Court adopts the findings and recommendations contained in the R&R in their entirety.

Accordingly, IT IS HEREBY ORDERED that plaintiffs are awarded \$25,364.78, representing \$16,344.45 in unpaid contributions, \$960.33 for interest on the unpaid contributions, \$243 in audit interest, \$3,073.00 in liquidated damages, \$2,600.00 for attorney's fees, and \$2,144.00 for other costs.

IT IS FURTHER ORDERED that plaintiffs shall serve a copy of this Order on defendants and file proof of service with the Court.

SO ORDERED.



JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: February 1, 2018
Central Islip, New York